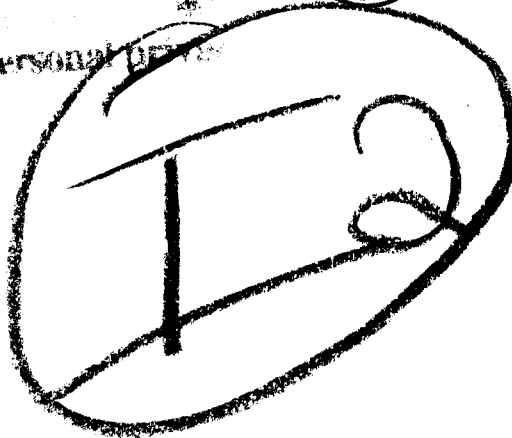
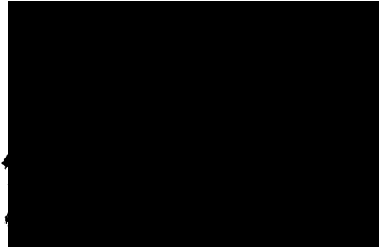


PHOTOCOPY

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U.S. Citizenship
and Immigration
Services



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:
(LIN-03-211-53330 relates)

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Travel Document Pursuant to Section 223 of the Immigration and
Nationality Act, 8 U.S.C. § 1203.

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico, who seeks to obtain a travel document (reentry permit) under section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1203. The Acting Director concluded that the applicant did not hold a valid lawful permanent resident or conditional resident status at the time the application was filed and denied the application accordingly. *See Acting Director's Decision* dated August 19, 2004.

The applicant completed Part 2, box a on her Application for Travel Document (Form I-131) that states:

I am a permanent resident or conditional resident of the United States and I am applying for a Reentry Permit.

In pertinent part, section 223 of the Act provides that an alien lawfully admitted for permanent residence who intends to visit abroad and return to the United States to resume that status may make an application for a permit to reenter the United States.

The regulation at 8 C.F.R. § 223.2 states in pertinent part:

(b) Eligibility.

(1) Reentry permit. Except as otherwise provided in this section, an application may be approved if filed by a person who is in the United States at the time of application and is a lawful permanent resident or conditional permanent resident.

The Acting Director denied the Form I-131 because the applicant failed to establish that she properly filed a Petition to Remove the Conditions on Residence (Form I-751) prior to the expiration of her conditional status and he refers to the regulation at 8 C.F.R. § 216.4(a)(6) which states in pertinent part:

Termination of status for failure to file petition. Failure to properly file Form I-751 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien's permanent residence status and the initiation of proceedings to remove the alien from the United States...

A search of the electronic database of Citizenship and Immigration Services (CIS) reveals that the applicant was admitted into the United States on February 7, 2003, as a conditional resident based on her marriage to a U.S. citizen. Pursuant to 8 C.F.R. § 216.4(a)(1) the applicant was eligible to file a Form I-751 from November 9, 2004, until February 6, 2005 the date her conditional resident status expires.

The regulation at 8 C.F.R. § 216.4 states in pertinent part:

Joint petition to remove conditional basis of lawful permanent resident status for alien spouse.

(a) Filing the petition -- (1) General procedures. Within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained permanent residence, the alien and the alien's spouse who filed the

original immigrant visa petition or fiance/fiancee petition through which the alien obtained permanent residence must file a Petition to Remove the Conditions on Residence (Form I-751) with the Service...

In addition the regulation at 8 C.F.R. § 216.4(a)(4) states in pertinent part:

(4) Physical presence at time of filing. A petition may be filed regardless of whether the alien is physically present in the United States. However, if the alien is outside the United States at the time of filing, he or she must return to the United States, with his or her spouse and dependent children, to comply with the interview requirements contained in the Act...

Based on the above the AAO finds that the Acting Director erred in stating that the applicant could not receive a reentry permit because she had not filed a Form I-751 prior to the expiration of her conditional status. The applicant's conditional status expires on February 6, 2005.

On appeal, filed on September 10, 2004, the applicant states that she has been living in the United Kingdom for the last year and her move to the United States has been put on hold. She further states that she is planning to visit the United States in December of 2004.

Although the applicant may have been eligible for a reentry permit on August 19, 2004, the date the Acting Director denied the Form I-131, CIS records reveals that on December 13, 2004, the applicant submitted a Form I-407, Abandonment of Lawful Permanent Resident Status. At the present time the applicant does not hold a valid lawful permanent resident or conditional resident status and therefore she is not eligible to receive a reentry permit. Accordingly, the appeal will be dismissed

ORDER: The appeal is dismissed.